



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



LEONEL GARZA v. SWIFT TRANSPORTATION CO.
CV-08-0382-PR

PARTIES AND COUNSEL:

Petitioner: Swift Transportation is represented by Marty Harper, Kelly Flood, and Natalia Garrett of Polsinelli Shughart PC

Respondent: Leonel Garza is represented by Robert Carey and Amy Wilkins of Hagens Berman Sobol Shapiro PLLC

FACTS:

Garza, a non-native speaking independent truck driver brought an action against Swift alleging underpayment for mileage he drove on trucking trips for Swift. Garza and others in the proposed class signed a form contract drafted by Swift providing that drivers would be paid \$.82 per “dispatched mile”.

Swift offered particular trips to the drivers via an electronic device called the Qualcomm with the mileage already calculated based on an industry reference manual, the Household Mover’s Guide. Although Swift claims that each QualComm offer constitutes a “mini-contract,” the form contract governs payment because it provides the payment term. The Guide calculates trip mileage using a center point in a destination city, as opposed to actual mileage driven on a trip. Swift’s former employee confirmed in deposition that the Guide is sometimes used in the trucking industry and that Guide-computed mileage is typically 6.5% less than the miles actually driven for each trip.

Garza learned that his truck typically ran up to fifteen to twenty percent more actual miles than the amount Swift compensated him under the Guide. More than one truck driver sued Swift for breach of the form contract. The trial court consolidated some cases. Garza filed his action as part of a consolidated class action complaint, asserting claims for: (1) breach of the form contract claiming he had been shorted mileage compensation and he was not informed that “dispatched miles” did not constitute actual miles driven; and (2) breach of the implied good faith and fair dealing covenant because Swift failed to inform its drivers that its practice was to underestimate mileage.

The superior court denied Garza’s motion for class certification ruling that: (1) Garza does not have a claim under his proposed class definition; (2) the class was not adequately defined; and (3) even if a class were identified, “the dispute over the meaning of the term ‘dispatched miles’ would require an individualized inquiry in every case into extrinsic evidence regarding the meaning of that term.”

Garza appealed, asserting the judge erred by concluding that the class is not adequately defined. First, he asserted that the class is objectively defined as “All persons who contracted with Swift Transportation with a Contractor Agreement East Coast o/o Rev. 12/04/01”. Second, he

argued the judge erred by concluding that interpreting the meaning of the phrase “dispatched miles” would require an individualized inquiry of extrinsic evidence because the form contract term can and should be interpreted uniformly for all contracting parties. Third, he asserted that individual inquiries into the knowledge of the class of drivers would not defeat class action certification.

The court of appeals concluded that: (1) Garza’s claim was typical of class members’ claims; (2) although Swift may have a unique defense to Garza’s claim due to his alleged knowledge that Swift was not offering to pay him based on actual mileage, the predominance requirement of a class action rule was satisfied because common questions predominate about whether mileage was to be paid according to actual mileage or the Guide; (3) class action was the superior mechanism to resolve the dispute because all class members entered into the same form contract, agreed to the same payment terms, and contended that the form contract obligated Swift to pay its drivers for actual miles driven for trips on which the drivers were dispatched.; and (4) as presented at this stage in the proceedings, the underlying course of performance issues do not appear complex enough to create an unduly burdensome undertaking. Accordingly, the court reversed and remanded for certification and further proceedings.

Swift seeks review, asserting that the court of appeals improperly eschewed the superior court’s findings that the action was unmanageable and that Garza knew before each trip he drove that he would be compensated based on the “dispatched” or predetermined number of miles. Swift also asserts that the decision ignores the class action commonality requirement by ruling that each independent contractor’s knowledge and understanding of the contract is irrelevant. Garza urges the Court to deny review because the decision is correct.

ISSUES:

1. Whether the trial court must examine evidence of the course of performance and course of dealing to determine the meaning of a disputed ambiguous term or whether such evidence is irrelevant because the case involves interpretation of a form contract.
2. Whether the class members are similarly situated merely because they signed the same form contract, irrespective of the type of contract and their actual knowledge as demonstrated by their specific course of performance and course of dealing.
3. Whether the fact that the putative class members signed a form contract alone constitutes a sufficient basis for a conclusive finding that common issues predominate and class certification is appropriate.

This Summary was prepared by the Arizona Supreme Court Staff Attorneys’ Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.